

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56777; File No. SR-NYSE-2007-87)

November 9, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Incorporate Certain Definitions of Exchange Act Rules 13d-1 and 13d-3 into NYSE Rule 460

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 28, 2007, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On October 29, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule, as amended, change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend NYSE Rule 460 to reference Rules 13d-1(i) and (j), and 13d-3, under the Act for the purpose of determining whether a specialist is a beneficial owner of an equity security in which the specialist is registered, and to make non-substantive clarifying amendments to the rule. The text of the proposed rule change is available at NYSE, the Commission’s Public Reference Room, and <http://www.nyse.com>.

¹ 15 U.S.C 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE is proposing to add NYSE Rule 460.40 to incorporate the definitions of Rules 13d-1(i) and (j), and 13d-3, under the Act³ for the purpose of determining whether a specialist is a beneficial owner of more than ten percent of any security in which the specialist is registered under NYSE Rules 460.10 and 460.20.

NYSE Rule 460.10 precludes specialists from being the beneficial owner, either directly or indirectly, of more than ten percent of the outstanding shares of any equity security in which the specialist is registered. For purposes of determining whether this ten percent threshold has been met, the specialist's position is aggregated with those of the specialist's member organization, as well as other members, allied members, approved persons, officers, and employees of the specialist's member organizations.

The rule contains a number of exceptions, including that the ten percent ownership threshold does not apply to specialists if the security is a convertible or derivative security, American Depositary Receipt, Global Depositary Receipt, or similar instrument so long as the

³ 17 CFR 240.13d-1(i) and (j); and 17 CFR 240.13d-3.

conversion of such instrument would not result in a position in the common stock of such security that exceeds that ten percent threshold.

Similarly, specialists in Exchange Traded Funds and other investment company units or Trust Issued Receipts can own such securities so long as the redemption of such securities would not result in a position in any equity security in which such specialist is also registered that exceeds the ten percent threshold.

To ensure consistency with federal laws and regulations, the Exchange proposes adding NYSE Rule 460.40 to incorporate the definition under the Act for determining beneficial ownership of securities. Rule 13d-3 under the Act defines a beneficial owner as any person who directly or indirectly has either voting power over a security or investment power, including the power to dispose, or to direct the disposition of a security. The rule further provides that all securities in the same class, regardless of the form that such beneficial ownership takes, shall be aggregated for purposes of calculating the number of shares beneficially owned by such person. Rule 13d-3 also defines how various financial instruments, including options, warrants, convertible securities, and trusts should be treated for purposes of determining beneficial ownership.

Rule 13d-1(i) under the Act provides that for purposes of Section 13(d) of the Act,⁴ including Rule 13d-3 thereunder, the term “equity security” refers to those securities that are registered pursuant to Section 12 of the Act.⁵ In addition, Rule 13d-1(j) under the Act provides that for purposes of determining the number of outstanding shares for any security, firms can rely on an issuer’s most recent quarterly or annual report, or any more current report, that has been filed with the Commission.

⁴ 15 U.S.C. 78m.

⁵ 15 U.S.C. 78l.

